International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Taxation of Non-Fungible Tokens in India: Adequacy, Challenges, and the Road Ahead

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ABSTRACT

Taxation of Non-Fungible Tokens (NFTs) is a topical challenge in the emerging global digital economy. NFTs, being individual blockchain assets symbolizing ownership of art, music, gaming collectibles, or virtual property, are difficult to fit into traditional categories of property, securities, or commodity law. India's Finance Act 2022 brought a framework for taxing Virtual Digital Assets (VDAs) including NFTs, by levying a flat 30 per cent tax on income arising on their transfer and a 1 per cent Tax Deducted at Source (TDS). This legislative move, making NFTs a part of the official economy, has at the same time created ambiguity around valuation, fairness, and the larger digital innovation implications.

The present paper embarks on an in-depth analysis of NFT taxation in India by putting the Finance Act 2022 within the overall policy context of economic formalisation. It analyzes the complexities of valuation, wherein subjective determination of price and unstable market conditions restrict even-handed assessment; risks of double taxation, especially where royalties, resale profits, and GST overlap; complexities of cross-border enforcement in decentralized blockchain transactions; and compliance burden on investors, creators, and exchanges through compulsory TDS deductions. These bring out the inflexibility and shortfalls in the current framework.

As a backdrop to understand India's strategy, the paper contrasts global practices. The United States has released Internal Revenue Service (IRS) guidance that indicates NFTs can be considered collectibles and taxed with a premium capital gains rate. The United Kingdom uses principles of capital gains tax to the transfer of NFTs, with the aim of equity with other assets. Singapore has exempted some NFT transactions from Goods and Services Tax (GST), which is a forward-thinking move, while the European Union is still considering a harmonized digital tax code under its proposed reforms of the digital economy. These cross-country views expose that India's flat-rate policy is an extreme outlier in its harshness, threatening to drive creators and investors to more innovation-friendly places.

The paper also addresses wider policy issues, such as whether NFTs are subject to capital gains rules or a general rate of tax, whether authentic creators should be distinguished from speculative traders, and how international cooperation, especially under the OECD's digital tax efforts, could reduce cross-border revenue losses.

Pursuant to these analyses, the report provides in-depth recommendations: the introduction of transparent and standardized valuation guidelines for NFTs; differentiated treatment for creators to foster innovation; relief from compliance burdens by amending the 1 per cent TDS; consideration of bilateral tax treaties to cover cross-border NFT transactions; and a phase-wise movement towards a capital gains tax model.

By plugging a major research lacuna in Indian juristic literature, this article contends that though India's taxation of NFTs is an important starting point, the existing architecture is incomplete and unbending.

What is needed is a remodeled approach one that scales the state's interests with the imperative to promote a dynamic digital economy.

KEYWORDS: Virtual Digital Asset (VDAs), Taxation, Crypto-currency, Non-fungible Tokens (NFTs), TDS, Investors

1. INTRODUCTION

1.1. Background of NFTs and Taxation

The past decade has witnessed a profound transformation in the digital economy with the emergence of blockchain technology and its diverse applications. One of the most striking innovations in this space is the Non-Fungible Token (NFT), a unique digital asset secured by blockchain that represents ownership of an underlying work, whether art, music, gaming collectibles, or even virtual real estate. In contrast to cryptocurrencies like Bitcoin or Ethereum, which are fungible and have equal value, NFTs are not fungible—i.e., each token is one-of-a-kind and cannot be swapped on a one-for-one basis. Such distinctiveness has created unparalleled monetary value, with NFTs becoming a hot commodity of investment, trade, and speculation.

The international NFT market went haywire in 2020–21 with billions of dollars being pumped into digital art and collectibles sales.[1] India, while being at a comparatively early stage, has not been immune to this trend. Indian digital entrepreneurs, game developers, and artists have made NFTs one of the popular media of creative expression and source of revenue. Likewise, investors, especially younger generations, have taken a keen interest in NFTs as an alternative asset class.[2] This exponential expansion has raised the interests of the regulators and tax authorities, who now find themselves dealing with the challenge of comprehending, classifying, and taxing these new digital assets.

Taxation of NFTs is a sophisticated challenge because their nature cannot be categorized neatly into the usual categories of property, securities, or commodities.[3] In India, the Finance Act, 2022, brought NFTs and other Virtual Digital Assets (VDAs) under the tax net by charging a 30% flat tax on income arising from their transfer and 1% Tax Deducted at Source (TDS) on transactions.[4] Though this step was a significant acknowledgment of NFTs in the formal economy, it's also brought important questions regarding valuation, cross-border transactions, the classification of NFTs as capital assets or business income, and the general equity of taxing a still-emerging industry at such a steep tax rate.

Against this background, taxation of NFTs is not merely a fiscal and legal issue but also a policy design matter. The problem for legislatures is to find a balance between state revenue generation and facilitating innovation in the digital economy. This conflict sets the underpinning context of this research paper.

1.2. Need for Taxation of NFTs in India

The sudden expansion of the NFT market has given birth to a whole new world of digital transactions, but its newness has also created legal and fiscal uncertainities. For governments, taxation of NFTs is not

[1] NonFungible.com, *NFT Market Quarterly Report 2021* (2021) https://nonfungible.com/reports accessed 10 September 2025.

[2] NASSCOM, *Crypto-Tech Industry in India* (2021) https://nasscom.in accessed 10 September 2025.

[3] Sunita Tiwari, 'NFTs and the Classification Conundrum: Property, Securities or Commodities? '(2022) 14(1) *NUJS Law Review* 55.

[4] Finance Act 2022, s 115BBH; Central Board of Direct Taxes (CBDT), *Guidelines for TDS on Virtual Digital Assets* (Circular No 13 of 2022, 22 June 2022).

only a revenue-raising opportunity but also a regulatory necessity to ensure
order in a field of activity that might otherwise flourish in a legal void. In contrast to legacy assets, NFTs move beyond geography and borders, frequently being exchanged in a number of jurisdictions on decentralized exchanges.[5]
This creates enormous challenges for defining taxable events, following ownership, and avoiding revenue leakage. In the absence of taxation, NFTs may become a conduit for tax evasion, money laundering, and illicit fund transfer through pseudonymous blockchain transactions.[6]
In India, with policy focus for the last few decades being formalization of the economy since moves like the Goods and Services Tax (GST) and demonetization have been made, it was imperative that the state bring tax law to tax new digital assets. Imposition of a 30% tax on NFT and other Virtual Digital Assets (VDAs) income, as proposed by the Finance Act, 2022, is in this regard.[7] This aimed at ensuring NFT-related income is taxed equally like other speculative or risky income sources to avoid unregulated speculation while increasing the tax base at the same time.
Another major necessity for taxation arises from equity and justice in the taxation framework. With NFTs proving profitable for artists and investors, the lack of taxation would lead to unequal advantages for those active in the digital asset marketplace, while conventional income classes continue to be taxed. This will contravene the theory of horizontal equity, under which individuals earning a comparable amount of income should pay an equal amount of taxes to the tax system.[8]
Apart from this, taxation also gives legitimacy and recognition to NFTs in the Indian legal system. By bringing NFTs under the statutory definition of "Virtual Digital Assets," the legislatures have officially established them as taxable economic entities, thus leaving the door ajar for future regimes in consumer protection, intellectual property rights, and international trade in digital assets.[9]
Therefore, taxation of NFTs in India has twin needs: to protect the state's financial interests by avoiding loss of revenue as well as to create legal certainty in a otherwise uncertain and opaque space. But the way this taxation has been conceived raises pertinent issues on its effectiveness, proportionality, as well as long-term consequences on innovation—issues that this paper would delve into at some length.

1.3. Existing legal framework for NFT taxation in India

The tax on Non-Fungible Tokens (NFTs) in India came into effect officially with the Finance Act, 2022, which brought a scheme for the taxation of Virtual Digital Assets (VDAs). NFTs were specifically included under the definition of VDAs under Section 2(47A) of the Income Tax Act, 1961, making them liable to a separate tax regime.[10] It was the first time that Indian legislation directly touched upon digital assets other than cryptocurrencies, recognizing NFTs as taxable assets.

[5] OECD, Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Policy Issues (OECD 2020) 18.
[6] Financial Action Task Force (FATF), Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (FATF 2021).
[7] Finance Act 2022, s 115BBH; Central Board of Direct Taxes (CBDT), *Guidelines for TDS on Virtual Digital Assets* (Circular No 13 of 2022, 22 June 2022).
[8] Richard Musgrave and Peggy Musgrave, *Public Finance in Theory and Practice* (5th edn, McGraw-Hill 1989) 213.
[9] Rohan George, 'Digital Innovation and Indian Tax Law: A Policy Perspective '(2023) 12(3) *National Law School Journal* 201.
[10] Income Tax Act 1961, s 2(47A) (as inserted by Finance Act 2022).

The key provision of this framework is Section 115BBH, which levies a flat rate of 30% on income derived from the assignment of VDAs, including NFTs.[11] In contrast to all other types of income, taxpayers cannot claim deductions (other than acquisition costs) against such income. Losses arising out of the transfer of NFTs cannot be offset against any other income or brought forward to later years and thus establish a strict and very limiting tax regime.[12] This is in line with the government wanting to treat NFTs more like speculative assets than typical investments.

In addition, to foster transparency and traceability, Section 194S was added by the Act, requiring a 1% Tax Deducted at Source (TDS) for every transfer of VDAs over a specified monetary value.[13] This is meant to create a trail of reportability so that transactions can be tracked within an otherwise decentralized blockchain environment by the tax authorities. By putting the responsibility on exchanges and marketplaces to deduct TDS, the state has tried to develop an enforcement mechanism for an inherently decentralized industry.

Further, the Central Board of Direct Taxes (CBDT) issued clarifications to eliminate ambiguities surrounding the extent of "VDAs." For example, only those NFTs, which can be transferred for consideration and are not associated with underlying tangible assets (like immovable property), will come under taxable. Nonetheless, this interpretative method has created uncertainty regarding the specific classification of some forms of NFTs, that is, utility-based or hybrid NFTs, and created legal uncertainty for creators and investors.

The law in turn also crosses paths with indirect taxation, specifically under the GST regime though no policy in line has been enunciated yet. NFT transactions may incidentally be subject to GST as supply of goods or services depending on their underlying nature but in the absence of explicit guidelines, the field remains subject to controversies.

Therefore, although the Finance Act, 2022, has laid down the initial tax regime for NFTs in India, it is still immature, limiting, and plagued with interpretational issues. This makes it imperative to critically analyze whether the current framework equitably meets the twin goals of generating revenue and encouraging innovation in the digital economy.

1.4. Challenges in NFT taxation in India

The taxation of NFTs in India, while acknowledged under the Finance Act, 2022, is replete with several challenges. One of the principal problems is the vagueness of legal categorization as NFTs may symbolize different assets like art, music, or game tokens, but the law categorizes them into one category of Virtual Digital Assets.[14] The flat 30% tax under Section 115BBH, combined with the disallowance of expenses as a deduction and loss set-offs, imposes an undue burden, especially on small creators and investors. GST applicability also clouds matters, since it is unclear whether NFTs are goods or services, especially in cross-border transactions, where it is challenging to identify the place of supply. Enforcement is another challenge, considering the decentralized and global environment of blockchain platforms, making it difficult to track peer-to-peer transactions. Valuation is also difficult, since NFTs are worth something due to highly subjective and volatile entities, making it difficult in fair

[11] Finance Act 2022, s 115BBH.
[12] ibid.
[13] Finance Act 2022, s 194S.
[14] Income Tax Act 1961, s 2(47A) (as inserted by Finance Act 2022); Finance Act 2022, s 115BBH.

market valuation.[15] These challenges also give rise to double taxation issues where both income tax and GST could be levied on the same transaction. Lastly, the lack of global coordination invites tax arbitrage, with investors moving to places that provide more beneficial tax environments.

1.5. Comparative international perspectives on NFT taxation

In order to appreciate India's stance on taxing NFTs, it is helpful to compare it with other jurisdictions. Other countries handle NFTs either as property, collectibles, or business assets.

COUNTRY	TAX TREATMENT OF NFTs	KEY FEATURES
United States	Capital gains tax; in certain instances taxed as collectibles	Tax rate is higher for collectibles; uncertainty caused by ambiguity
United Kingdom	Capital gains tax for hobby investors; income tax if trading is akin to business	Case-by-case approach, less flexible
Singapore	No capital gains tax; income tax is applicable if NFT activity is business-like	Attracts occasional investors; equitable for professionals
European Union	Differ by nation; some charge income tax, others VAT	No standardization across member states
Australia	Capital gains tax is applicable; GST can apply to business NFT sales	More transparent than most nations; double taxation feasible
India	Flat 30% rate on NFT income; no deductions or set-off of loss	Hardest regime, restricts flexibility and investor confidence

Based on such a comparison, it can be appreciated that India has taken one of the most stringent models of taxing NFTs. As opposed to the UK or Singapore, where flexibility is inherent in the system, India's across-the-board 30% tax does not differentiate between amateur investors and professional traders. This will deter investment in the NFT market and push innovation abroad. Taking a cue from countries with a more nuanced approach, India may re-examine its framework to achieve a better balance between tax revenues and promoting the digital economy.

16. Research gap and significance of study

Even though India already levies a 30% tax on NFT and other virtual digital asset income as per the Finance Act, 2022, there is scant academic and policy research on the implications of such a framework. Existing literature primarily presents taxation of cryptocurrencies in general, whereas NFTs are either a sub-topic or omitted entirely. There is also a dearth of comparative research analyzing India's inflexible system in comparison with global best practices. Additionally, the socio-economic impacts—such as

[15] OECD, Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Policy Issues (OECD 2020) 27.

effects on innovation, start-ups, and India's potential to become a digital economy hub—have yet to be critically evaluated.

This research tries to fill this research gap by analyzing India's taxation policy on NFTs in detail, juxtaposing it with global models, and discovering its economic, legal, and policy implications. The importance of this study is to offer an informed and policy-relevant analysis that will inform lawmakers, tax authorities, and industry players towards a more equitable direction. Through the paper, the academic body added to the body of knowledge on digital asset taxation and established NFTs as a special category deserving of informed legal treatment.

1.7. Research aim and structure of paper

The central aim of this research is to evaluate India’s approach to NFT taxation, identify its strengths and shortcomings, and propose reforms that align with global best practices while supporting innovation and revenue goals. The paper also aims to contribute to legal scholarship by clarifying how NFTs should be conceptualized in tax law and highlighting the need for a flexible, investor-friendly, and innovation-driven policy framework.

Structure of the Paper:

- The paper begins with an Introduction and a discussion of the Background of NFTs and Taxation.
- It then examines the Need for Taxation of NFTs in India, followed by an analysis of the Challenges in NFT Taxation.
- A Comparative International Perspective is presented to contextualize India’s position.
- The study then identifies the Research Gap and Significance, before outlining the Research Aim and Structure.
- Finally, the paper provides Policy Implications and Recommendations and concludes with key findings.
- This structured approach ensures clarity, logical progression, and a comprehensive treatment of the subject matter.

2. LITERATURE REVIEW

The policy and academic literature on NFTs and taxation is as yet in its infancy, especially in India, and most of the discussion is centered on cryptocurrencies and digital assets, not necessarily NFTs as such. There are a few strands of scholarship and commentary nonetheless.

2.1. Primary legal and policy sources

The article **"Legal and Regulatory Challenges of Non-Fungible Tokens (NFTs)"** by **Belim and Sharma (2024)**[16] offers an in-depth description of the changing international and Indian legal scenario around NFTs. It situates NFTs as distinct digital assets separate from cryptocurrencies because they are indivisible and bear provenance, and follows their varied use cases in art, fashion, sports, and real estate. The authors outline how these digital tokens complicate the legal issues of ownership, copyright, taxation, and consumer protection. One of the substantial contributions of this work is identifying significant regulatory uncertainties in jurisdictions. NFTs are principally unclassified worldwide, with no clear understanding of whether they can be classified as securities, commodities, or sui generis digital

[16] Alan Belim PS & Sukriti Sharma, *Legal and Regulatory Challenges of Non-Fungible Tokens, SSRN (2024),* https://ijcrt.org/papers/IJCRT2411846.pdf

assets. The authors mention the FATF's function-based approach, emphasizing that regulation should be based on the purpose of NFTs and not their technical nature. In the Indian scenario, the research highlights the absence of clarity in the Securities Contract (Regulation) Act, 1956, and the Foreign Exchange Management Act, causing compliance problems for both investors and creators. The article also focuses specifically on intellectual property rights (IPR), setting out that the ownership of an NFT does not necessarily involve copyright in the original work. The authors refer to the landmark Hermès v. Rothschild "MetaBirkins" case to provide an example of conflicts between trademark law and computer-generated art. Such an analysis calls for greater contractual and statutory protections. In taxation, the research considers India's Finance Act, 2022, which included NFTs under the definition of Virtual Digital Assets (VDAs), subjecting them to a flat rate of 30% on profits and 1% TDS on transfers. The article compares this with international best practices, e.g., the U.S. model of capital gains, the U.K. model of capital gains tax with differences in trading income, and Australia's treatment of NFTs as collectibles. The authors add that India's stringent flat-rate policy may deter investors and creators. The paper also covers consumer protection and fraud concerns, adding that schemes such as phishing, rug pulls, and fake NFTs thrive because of inadequate regulation. It recommends disclosure standards, dispute resolution procedures, and AML/KYC necessities on platforms. By and large, the study adds to the literature by charting legal, regulatory, and taxation issues in both international and Indian settings. But it has a descriptive focus, merely pointing out issues and gaps in regulations without drawing out extensive empirical information on the economic effect of India's tax system. That leaves room for more research—e.g., testing whether India's tax model properly balances the raising of revenues with advancing digital innovation—which is the main question of the current paper.

The paper **"Cryptocurrency Taxation in India: A Critical Analysis"** by **Dr. Sreenidhi K. R. and Sakshi Chaturvedi (2024)**[17] gives a critical analysis of the Finance Act, 2022's VDA taxation regime for India. It discusses how the uniform 30% tax on gains and 1% TDS on transactions take a strict "one-size-fits-all" approach in classifying cryptocurrencies, tokens, and NFTs under one category despite their variegated natures. The authors highlight ambiguities regarding valuation, classification, and compliance, pointing out that the framework disproportionately places burdens on investors and innovators by prohibiting loss offsets and deductions. One of the most important contributions of the paper is to compare international models, including how the analysis of the legacy of the U.S., Singapore's GST zero-ratings law, and Germany's tax exemption for capital gains presents India's flat rate system as an outlier that threatens participation and exports creators and investors overseas. The authors successfully suggest more precise asset definitions, differentiated tax treatments, and streamlined TDS systems that will help to balance revenue objectives and innovation. Although the research talks about VDAs in general terms, it does not address NFTs in particular, and hence there is a knowledge gap. This gap forms the foundation of the current research, which extends their critique to evaluate the sufficiency and challenges posed to NFT taxation in India.

Vatsa Akanksha's article, **"Taxation of Virtual Digital Assets in India: A Critical Analysis" (2022)**[18], offers a thorough analysis of India's legal and financial response to virtual digital assets

[17] Dr. Sreenidhi K.R & Sakshi Chaturvedi, *Cryptocurrency Taxation in India: A Critical Analysis, SSRN (2024), https://www.researchgate.net/publication/391391625_Cryptocurrency_Taxation_in_India_A_Critical_Analysis*

[18] Vatsa Akanksha, *Taxation of Virtual Digital Assets in India: A Critical Analysis*, SSRN (2022), https://hpnlu.ac.in/PDF/4fac1ba0-3e12-4d34-bc27-173871d9d869.pdf

(VDAs) and their taxation, including cryptocurrencies and NFTs. The article starts by situating the emergence of VDAs internationally and in India, observing that they continue to gain popularity among investors despite ongoing legal ambiguity. It outlines the government's changing stance—from the Reserve Bank of India's custodial notices and previous legislative efforts to prohibit cryptocurrencies, to the Finance Act 2022 that introduced taxation provisions rather than prohibition. The article critically examines the amendments under the Finance Act, specifically Section 115BBH (levying a flat 30% tax on VDA income without set-offs or deductions), Section 56(2)(x) (considering VDAs received as gifts over ₹50,000 for tax purposes), and Section 194S (levying 1% TDS on transfers). Akanksha highlights that these steps are a de facto acceptance of VDAs but do pose serious concerns. These comprise definitional uncertainty under Section 2(47A), under which NFTs and other new digital assets are not sufficiently defined; strict tax treatment equating VDA profits with speculative income like betting; workable compliance challenges for exchanges to apply TDS; and the lack of a wider regulatory structure. The writer opines that while taxation conveys legitimacy and adds to state revenue, it can also crush investor sentiment and innovation without clear definitions and supporting framework. Akanksha advocates a multi-stakeholder strategy that includes legislators, crypto exchanges, and consumer associations to shape the legal framework, especially with regard to GST applicability and the definitional precision of NFTs.

Jaman, Putri, Aprianti, and Hidayatullah's paper **"The Legal Framework and Taxation of Non-Fungible Tokens" (2024)**[19] analyzes Indonesia's absence of an explicit tax and regulatory framework for NFTs. The authors point out that although NFTs have developed exponentially in popularity in art, gaming, and online trade, Indonesian law does not yet explicitly see them as taxable properties. This legal void has led to uncertainty as to ownership rights, copyright protection, and possible misappropriation of NFTs to illegal purposes including money laundering and data abuse. The research adopts a normative juridical approach, examining current legal provisions and secondary materials in assessing how NFTs might be incorporated into Indonesia's legal and taxation framework. It notes that, unlike in jurisdictions like the United States and some of Europe where tax treatment is more distinct, Indonesia at present is depending on general VAT and income tax provisions with no specific guidelines on NFTs. This exposes it to tax evasion and erodes government revenue. The authors note that effective regulation of NFTs should go beyond covering tax burdens but should also guarantee consumer protection, copyright enforcement, and integrity of digital markets. The study concludes that Indonesia needs an overall legal regime at its earliest to establish valuation mechanisms, compliance procedures, and regulatory measures integrating NFTs into its formal economy. This study is particularly relevant to the current study as it highlights the difficulties of developing economies in designing NFT taxation legislation, presenting comparative insights against India's Finance Act, 2022.

2.2. Secondary analyses and commentary

Indian doctrinal commentary

Indian commentary on tax since 2022 aligns that 115BBH/194S shed light on rate and collection but engender design frictions (no loss set-off, TDS of 1% affecting liquidity) and GST classification of NFT is unsettled. Top firm analyses emphasize compliance complexity for exchanges/marketplaces (e.g., who

[19] Ujang Badru Jaman, Galuh Ratna Putri & Indri Aprianti, *The Legal Framework and Taxation of Non-Fungible Tokens, SSRN (2024),* https://www.researchgate.net/publication/379615686_The_Legal_Framework_and_Taxation_of_Non-Fungible_Tokens

deducts TDS in brokered or barter transactions) and warn on FEMA and cross-border issues awaiting clear rules.[20]

Pre-/post-Budget GST debate

Prior/to the 2022 Budget, senior GST experts contended NFTs most probably qualify as taxable supplies but differed on goods vs services, valuation (royalties/secondary sales), and place of supply for cross-border transfers of rights. This train of thought holds good since no GST circular specific to NFTs has been issued subsequently.[21]

US academic/practitioner debate on collectibles

US commentary to Notice 2023-27 centers on whether collectible labeling should be contingent upon the underlying right (look-through) and on spillovers to capital-gains tax rates, IRAs, and sales tax. Industry submissions criticize definitional overreaching and advocate technology-neutral rules.[22]

Comparative public-international tax transparency

Policy briefs and practitioner notices highlight that CARF/CRS changes meaningfully broaden reporting for NFT marketplaces, custodians, and brokers, imposing KYC/traceability even when national charging provisions vary—an unfolding compliance standard likely to bear on India's final indirect-tax and exchange-control handling.[23]

3. RESEARCH GAP

Though the Finance Act, 2022 placed NFTs in the tax net by charging a flat rate of 30% on income arising from the transfer of Virtual Digital Assets (VDAs) including NFTs, this legislative intervention is not as much as an initiation as it is a limited framework. The Act fails to give specificity to valuation methods of NFTs, which can differ substantially based on their distinctiveness, volatility in the marketplace, and personal sense of value. Further, concerns regarding cross-border transactions in NFTs—e.g., the determination of the place of accrual of income, the application of Double Taxation Avoidance Agreements (DTAAs), and enforcement in the case of offshore marketplaces—continue to be unspoken.

Prior legal literature and commentary on NFT taxation in India have been mostly descriptive but not analytical. Academic publications and professional memoranda have only reproduced the provisions of the Finance Act in most cases without analyzing the practical enforcement challenges or the possible conflicts with international taxation concepts. Concomitantly, while other jurisdictions like the United States of America, the European Union, and Singapore have begun debating classifying and taxing NFTs, there is very limited comparative scholarship analyzing whether India's own approach is aligned with or diverging from international best practice.

This paper attempts to fill these voids by providing a comparative overview of India's NFT tax regime vis-a-vis international practices, identifying outstanding issues like valuation, compliance, and

[20] Nishith Desai Associates, Taxation of Virtual Digital Assets in India: Analysis of the Finance Act 2022 (NDA 2022) https://www.nishithdesai.com accessed 10 September 2025.

[21] Deloitte India, *NFTs and Indirect Taxation: The Unanswered Questions* (Deloitte 2022) https://www2.deloitte.com accessed 10 September 2025.

[22] Internal Revenue Service, *Notice 2023-27: Treatment of NFTs as Collectibles* (IRS 2023) https://www.irs.gov accessed 10 September 2025.

[23] OECD, Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard (OECD 2022).

regulatory ambiguity, and examining their impact on innovation, investment, and digital economy growth.

4. ORIGINAL CONTRIBUTION OF THE PAPER

This research contributes a unique contribution to the new scholarship on taxation of Non-Fungible Tokens (NFTs) in India by providing one of the earliest overall doctrinal and policy examinations of the Finance Act, 2022 as read specifically in relation to NFTs. Although the majority of current Indian legal and tax scholarship encompasses NFTs within the larger cryptocurrency debate, this research delimits NFTs as a discrete subcategory of Virtual Digital Assets (VDAs) and thus closes an important gap in scholarship.

Secondly, the paper offers a comparative dimension lacking in earlier Indian commentaries. Comparing the strategies of the United States, United Kingdom, Singapore, and the European Union, the analysis shows how India's flat 30 per cent regime stands out as an exception globally and identifies global best practices with lessons that could inform domestic reform. This comparative examination not only places India at the center of the developing international discussion of digital taxation but also assists in the recognition of feasible solutions to issues like valuation, double taxation, and cross-border enforcement.

Lastly, the paper goes beyond descriptive analysis and adopts a prospectively focused reform agenda. It suggests transparent policy reforms, such as differentiated categorization of NFTs (collectibles, utility-based, royalty-bearing, and investment-oriented), moving away from a flat rate to a capital gains tax, platform-based reporting requirements, and convergence with the OECD's Crypto-Asset Reporting Framework. Through combining the doctrinal critique with normative policy proposals, the paper offers an equitable framework that attempts to reconcile state revenue imperatives with the imperative of promoting digital innovation and entrepreneurship in India.

5. STATEMENT OF PROBLEM

The swift surge in Non-Fungible Tokens (NFTs) as a separate category of digital assets has created unprecedented regulatory and fiscal challenges globally. In India, the Finance Act, 2022, brought NFTs under the tax net by classifying them as Virtual Digital Assets (VDAs) and subjecting income arising from their transfer to a flat rate of 30% tax along with 1% TDS on transactions. Although this is a legal beginning, the scheme is incomplete and potentially flawed.

The central question is whether India's current tax regime for NFTs is sufficient, equitable, and future-proof, or if it inadvertently discourages innovation, investment, and engagement with the digital economy. Valuation issues, the distinction of NFTs as being capital assets or commodities, and the handling of cross-border transactions are still unresolved. Additionally, the one-size-fits-all 30% tax rate does not differentiate between speculative gains and legitimate entrepreneurial or creative income, hence posing a risk of deterring creators, startups, and investors in the NFT arena.

The issue, thus, is the disconnect between the dynamic character of NFTs and India's static, poorly developed taxation regime. Unless mitigated by sophisticated policy changes and synchronization with global norms, this disconnect could limit India's capacity to strike an equilibrium in collecting revenue, protecting investors, and fostering innovation in the digital economy.

6. HYPOTHESIS

India's existing regime for taxing Non-Fungible Tokens (NFTs) is unfinished and unrealistic in its current guise. While the flat 30% levy under the Finance Act, 2022 secures revenue for the government, it does not tackle important issues like valuation nuances, cross-border NFT transactions, and the digital innovation and adoption implications at large. It is presumed in this paper that in the absence of reforms, the same stiff structure could discourage innovative engagement and investment into the NFT space. Thus, a finer and more balanced tax policy is required to ensure government income on one hand while promoting technological development and innovation for India's digital economy on the other hand.

7. RESEARCH OBJECTIVES

- To critically examine India's existing regime of taxation of NFTs as adopted under the Finance Act, 2022.
- To assess the pragmatic challenges emerging in valuation, compliance, and enforcement of taxation of NFTs.
- To carry out a comparative analysis of India's taxation system with chosen overseas jurisdictions, with best practices and learnings for India.
- To suggest policy recommendations that can help provide a well-balanced approach—generating government revenue while promoting digital innovation and growth in the NFT space.

8. RESEARCH QUESTIONS

- Is India's existing NFT taxation policy, as brought in by the Finance Act, 2022, comprehensive enough to tackle the issues of valuation, compliance, and enforcement?
- How does India's approach to NFT taxation compare with that of other leading jurisdictions, such as the United States, United Kingdom, and Singapore?
- What legal and policy reforms are necessary to ensure that NFT taxation in India remains fair, efficient, and conducive to fostering digital innovation?

9. SCOPE AND LIMITATIONS

This research is limited to the taxation of Non-Fungible Tokens (NFTs) based on the Indian legal regime, specifically under the Finance Act, 2022. Although NFTs are included under the general category of Virtual Digital Assets (VDAs), this research pertains only to NFTs and not to any other kind of VDAs like cryptocurrencies or utility tokens. Analysis is restricted to taxation law, without exploring the securities law dimensions, regulatory categorizations, or intellectual property effects of NFTs.

Geographically, the paper focuses mainly on India, while obtaining comparative lessons from chosen international jurisdictions like the United States, United Kingdom, and Singapore. The research is not intended to be a complete worldwide overview of NFT taxation but limits itself to these jurisdictions for a useful comparative context.

Lastly, given that NFT taxation is an emerging space, the analysis here is limited by the fact that laws, policies, and enforcement strategies are changing very quickly. Hence, conclusions made in this paper are based on the legal and policy environment as it exists at the moment of writing.

10. ANALYSIS AND DISCUSSION

10.1. NFT taxation in India - Legal framework

The taxation of Non-Fungible Tokens (NFTs) in India officially started with the Finance Act, 2022, where a new category of assets named Virtual Digital Assets (VDAs) is defined under Section 2(47A) of the Income Tax Act, 1961.[24] As per this definition, a VDA is:

1. Any information, code, number, or token produced via cryptographic processes or otherwise, giving digital representation of value, which can be transferred, stored, or settled electronically.
2. Non-Fungible Tokens (NFTs) or other tokens of similar nature, by any name they may be known, as may be notified by the Central Government.
3. Any other digital asset as may be notified.

These words of law stipulate that NFTs, although unique and distinct from such cryptocurrencies as Bitcoin or Ethereum, are legally VDAs and taxed similarly.

The Finance Act inserted Section 115BBH, which prescribes the scheme of taxation for VDAs, including NFTs.[25] It states that:

- The income arising from the transfer of a VDA is taxed at a flat rate of 30%.
- Except the cost of acquisition, no deduction is permitted. For example, fee paid to the platform, transaction fees (usually high on blockchain), or marketing expenses on sale of NFT cannot be deducted.
- Losses arising from the transfer of one VDA cannot be offset against profits from another VDA, nor can they be transferred to subsequent years.

Moreover, Section 194S was introduced to charge a 1% TDS (Tax Deducted at Source) on payments made towards the transfer of VDAs.[26] This does not just extend to large investors but also to regular buyers and sellers. This implies that when buying or selling, 1% of the value of the transaction is withheld and paid to the government. Although this measure ensures traceability of tax within an increasingly digital and borderless economy, it has resulted in practical challenges. For small artists or traders carrying out multiple transactions, deduction of 1% on each transaction lowers liquidity and deters entry into the NFT market. The aim of the government in doing this is to leave a digital footprint and avert tax evasion in an otherwise anonymous and global market.

Another problem with the existing framework is the lack of specificity in defining NFTs under the VDA category. The legislation widely captures digital representations of value, but NFTs are distinct in that they are not fungible and tend to represent intellectual property, digital artwork, or gaming assets. However, the law takes a one-size-fits-all solution, equally treating NFTs like fungible cryptocurrencies such as Bitcoin or Ethereum. This causes misunderstandings, particularly when NFTs are attached to real assets (such as tokenised property or art), since it is not so clear how these so-called hybrid cases would be taxed.

Compliance has also become a prominent challenge. The majority of NFT transfers take place on international websites like OpenSea or Rarible, which might not charge TDS to Indian users. In these cases, the onus of compliance rests squarely on the buyer or seller, many of whom do not have the technical acumen to deal with tax filings. The valuation of NFTs is not uniform as well. In contrast to shares or real estate where there is a market price or stamp duty value, NFTs tend to get their value from subjective elements like aesthetic value, scarcity, or popularity within a community. This creates

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[24] Income Tax Act 1961, s 2(47A) (inserted by Finance Act 2022).

[25] Finance Act 2022, s 115BBH.

[26] Finance Act 2022, s 194S.

uncertainty regarding how tax authorities can universally identify fair value of NFTs for enforcement reasons.[27]

Apart from direct taxation, there is uncertainty about how NFT sales will interact with other taxation rules, including the Goods and Services Tax (GST). Because NFTs may include royalties for creators or resale deals, it is not clear if GST is to be levied in addition to income tax.[28] This raises the potential for double taxation, adding to the cost of creators and investors.

Overall, India's tax regime for NFTs is so far grounded on a strict and one-size-fits-all scheme: a plain 30% tax, a 1% TDS obligation, and wide umbrella coverage under VDAs. While this secures revenue collection and puts digital assets in the tax net, it also presents issues of valuation, compliance, platform liability, and possible overlaps with other taxing statutes. As the NFT economy matures, these loopholes will slow India's digital economy growth unless additional enhancements are brought into the system.

10.2. Challenges in Indian context

Though India has launched a taxation regime for Virtual Digital Assets (VDAs) under the Finance Act, 2022, its real implementation to Non-Fungible Tokens (NFTs) has exposed a number of challenges. They are not just legal and technical but also economic and social, impacting investors, artists, and the digital economy at large.

10.2.1. Valuation of NFTs

The greatest challenge in taxing NFTs is valuation. In contrast to commodities or shares, NFTs do not share a standard market price. The price of an NFT varies mainly with demand, popularity of the artist, and scarcity of the digital object. For instance, two NFTs from the same artist can be sold for significantly different prices depending on market demand. In the absence of a uniform valuation system, the tax authorities would find it hard to determine the "fair market value" at the point of transfer. Further, if an NFT is bought with cryptocurrency, the volatility of crypto introduces an extra layer of difficulty in determining the amount of tax.[29]

10.2.2. Risk of Double Taxation

NFT transactions have the risk of being taxed twice. When an artist creates and sells an NFT, the income is taxed at 30% according to the VDA norms. But if the NFT is being resold in the secondary market, the buyer could once again be taxed for capital gains. Apart from this, uncertainty prevails on the levy of Goods and Services Tax (GST). If both GST and income tax are applied to the sale of NFTs, the same transaction will be doubly taxed, deterring creators as well as investors.[30] The uncertainty as to whether an NFT is a "good," "service," or "security" for GST law makes this situation even worse.

10.2.3. Cross-Border Enforcement

NFTs are intrinsically borderless since they are sold from foreign blockchain platforms. Indian investors buy NFTs from overseas markets using cryptocurrencies. In such situations, it becomes very challenging to implement Indian tax laws. The anonymous nature of blockchain transactions makes it challenging for the authorities to find out the identity and nationality of the sellers and buyers. Even if transactions are

[27] OECD, Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Policy Issues (OECD 2020) 27.
[28] Deloitte India, *NFTs and Indirect Taxation: The Unanswered Questions* (Deloitte 2022) https://www2.deloitte.com accessed 10 September 2025.
[29] OECD, Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Policy Issues (OECD 2020) 27.
[30] Deloitte India, *NFTs and Indirect Taxation: The Unanswered Questions* (Deloitte 2022) https://www2.deloitte.com accessed 10 September 2025.

identifiable, jurisdictional challenges occur since the servers, exchanges, or even the NFT itself can be situated outside India.[31] In the absence of international collaboration or agreements, enforcement of Indian taxation on NFTs in cross-border situations is feeble.

10.2.4. Effect on Innovation and Talent Exodus

The draconian tax rate on NFTs of 30% tax without deductions and 1% TDS per transaction has led to fears that Indian creators and investors would take their businesses offshore to nations with better tax environments. A number of reports already indicate that Indian crypto exchanges and NFT startups are considering shifting base to countries such as Dubai or Singapore. This poses a threat of "talent flight," wherein India risks losing out on innovation, entrepreneurship, and future revenue in the long term.[32] The existing tax regime might inadvertently dissuade the NFT ecosystem rather than nurturing it.

10.2.5. Uncertainty with Respect to Classification

Another concern is that all NFTs have been grouped together and classified as VDAs. All NFTs are not created equal—whereas some are digital art or collectibles, others are associated with utility functions such as event tickets, music ownership, or access to a service. Classification under the same tax regime overlooks these differences. For instance, taxing a utility NFT that is used as a ticket to the same extent as a unique digital painting might not be equitable. This absence of subtle categorization generates unfairness and diminishes the extent to which NFTs are utilized for creative ends aside from collectibles and art.

10.2.6. Keeping of Records and Auditing Challenges

While blockchain provides transparency, it is pseudonymous in character and thus proves difficult to attribute wallet addresses to individual people. Taxpayers are required to keep records of NFT sales, purchases, wallet addresses, as well as transaction history. For small investors or regular artists, such a level of record-keeping may be daunting. Likewise, tax authorities might have a hard time confirming transactions, particularly if they are made to foreign platforms or paid in cryptocurrencies. Such a gap risks tax evasion and discriminatory taxation based on incomplete information.

10.2.7. Volatility of Crypto Payments

As most NFTs are purchased and sold using cryptocurrencies like Ethereum (ETH), cryptocurrency asset volatility is another issue. If a user sells an NFT for 1 ETH today, the INR value could differ significantly from the transfer date to the taxation date, with fluctuating exchange rates. This complicates it for both authorities and taxpayers to determine the correct tax liability. The issue is compounded further in border crossings where foreign exchange is also at play.

10.2.8. Enforcement On Small Investors

The existing NFT tax framework makes the assumption that all stakeholders are large investors or high-net-worth individuals. Many small-scale investors, students, and young creatives are, however, testing the waters of NFTs as a means of survival or creative exploration. For them, 30% tax with no deductions and the compulsory 1% TDS on every transfer result in undue compliance costs. In certain circumstances, the compliance cost can be more than the actual income from NFT transactions. This deters grassroots involvement in the digital economy.

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[31] Financial Action Task Force (FATF), Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (FATF 2021).

[32] NASSCOM, *Crypto-Tech Industry in India* (2021) https://nasscom.in accessed 10 September 2025.

10.3. Comparative Jurisdictions

NFTs have drawn international attention, and governments have begun to take measures to tax and regulate them. There is no single, one-size-fits-all solution, but other jurisdictions' learning is helpful. Observing the way the United States, United Kingdom, Singapore, and European Union have progressed, India can learn what can be expected and how it can be made to function.

10.3.1. United States: NFTs as "Collectibles"

The United States Internal Revenue Service (IRS) has explained that NFTs are generally treated as property for tax reasons. In 2023, the IRS issued a notice that some NFTs will be taxed as "collectibles." That is, if an NFT is ownership of some art, precious stones, or a physical collectible, when you sell it, it may be taxed at a higher rate of 28% collectibles tax, instead of the lower rate of long-term capital gains. For instance, the sale of Beeple's legendary digital art "Everydays: The First 5000 Days" for $69 million at Christie's in 2021 sparked questions on whether the funds should be taxed as regular income to the artist, whether it should be taxed as collectible income, or whether it should be treated as capital gain to sellers and buyers. The IRS continues to invite public comments to further improve these rules, and this is an indication that the U.S. system is changing but will be principle-driven.

10.3.2. United Kingdom: Capital Gains and VAT

In the UK, the existing regulations are imposed on NFTs by HM Revenue & Customs (HMRC). If individuals buy NFTs as an investment, selling profits are subject to Capital Gains Tax (CGT). If an individual is actually creating and selling NFTs as a business, the gains can be taxed under Income Tax regulations.

VAT (Value Added Tax) is also important. NFTs were seized for the first time by HMRC in 2022 in a £1.4 million VAT fraud. It ensured that U.K. authorities consider NFTs as assets that can be seized, and they can even be taxed for VAT if utilized in taxable transactions. This case ensures that taxation of NFTs is not only income and capital gains, but indirect taxation like VAT as well.

10.3.3. Singapore: GST Exemptions in Certain Cases

Singapore was more liberal in its approach. The Inland Revenue Authority of Singapore (IRAS) charges tax on NFT income based on the activity. If one engages in NFTs as a regular activity, gains are considered income. If one occasionally buys and sells NFTs, they can be taxed as capital assets.

On the GST side, Singapore did not charge digital payment tokens (e.g., Bitcoin). But the majority of NFTs are not digital payment tokens, and therefore they will usually be classed as typical digital services and hence remain taxable under GST. For instance, if an NFT is employed to give access to online material, GST would be payable as it is for any digital service.

10.3.4. European Union: Towards a Harmonized Framework

The European Union (EU) has been considering whether NFTs are to be taxed and how, specifically for VAT. In a working document, the EU VAT Committee suggested that tax treatment of NFTs would be based on the underlying asset. For example, if the NFT is an ownership token of a song or artwork, then VAT treatment has to be the same as the sale of the artwork or song.

While the EU has enacted a more far-reaching law called MiCA (Markets in Crypto-Assets Regulation), which is not necessarily a tax law but produces standardized rules for crypto-assets, this reduces uncertainty and causes all EU member states to use the same regulatory approach, making it ultimately easier to create harmonized tax rules.

10.3.5. Lessons for India

The comparative taxation of NFTs in United States of America, United Kingdom, Singapore, and the European Union has several lessons for India that can be learned while designing its own tax regime. With NFTs becoming popular in India not only as a digital collectible but even as an investment and trading vehicle, the absence of a clear and certain taxation regime can lead to confusion, controversy, and even abuse. India needs to learn best international practices and adapt them to the domestic scenario for an even-handed regime.

- *Clarity through Classification*

Perhaps the single most effective lesson India can take from the U.S. is the importance of classification. The IRS has experimented with a "look-through approach," where the tax treatment of an NFT depends on the nature of the underlying asset. For instance, an NFT tied to a work of art could be taxed as a collectible, while an NFT representative of ownership interest in a game or music rights could be in a different basket. This classification system permits flexibility without generating blanket rules of taxation that do not comply with economic reality.
India can follow the same path by passing a law that differentiates between classes of NFTs:

- Collectibles-focused NFTs (such as art, trading cards, digital collectibles).
- Utility-based NFTs (e.g., tickets, gaming assets)
- Royalty-bearing NFTs (for example, NFTs that create repeat revenue streams for artists)
- Investment NFTs (for which NFTs are bought and held solely for profit-making purposes).

By categorizing tax provisions under these heads, India can avoid over-taxation as well as litigation. Taxpayers and the government will also be able to implement the provisions of the Income Tax Act available to them consistently.

- *Treatment of GST*

Yet another important lesson is from Singapore and the EU, both of which highlight the principle of underlying assets when imposing indirect taxes such as GST or VAT. Currently, in India, NFTs are in danger of being pushed into a grey area where both GST and income tax could potentially apply without any clear boundaries, and so, could cause double taxation.
A better approach would be to link the GST treatment of NFTs to the underlying transaction:

- o If the NFT is a digital good (for instance, access to a virtual concert), it must be taxed as a digital good.
- o If the NFT is only evidence of ownership of a physical item, GST has to adopt the treatment of such a physical item.
- o If the NFT is just a collectible with no related service, GST can be levied at the rate applicable to digital goods.

This approach ensures uniformity and prevents cascading taxation, a problem recently raised by NFT artists and investors in India.

- *Valuation Rules*

Valuation will probably be the most contentious issue in taxation of NFTs. In contrast to physical property, NFTs are traded on volatile markets whose prices are subjective and extremely vulnerable to demand. To that extent, NFTs are purchased using cryptocurrencies, which themselves are volatile.
The US and EU approaches stress that keeping concise guidelines on valuation is critical. For India, it may mean:

- o Seeking the application of an agreed exchange rate at the time of the exchange when consideration is in cryptocurrency form.

- Explain if the gas fees, platform fees, and royalties are included in the tax amount.
- Encouraging frequent reporting requirements to reduce taxpayer and tax authority conflicts.

These measures will prevent ad hoc valuation techniques, reduce litigation, and enhance tax administration predictability.

- *Platform Responsibility*

One of the most striking lessons from the EU and OECD is the power of keeping platforms accountable for reporting. The new global Crypto-Asset Reporting Framework (CARF) and the EU's DAC8 directive mandate the reporting of user transactions to tax authorities by marketplaces. This is better compliance without imposing an excessive burden on individual creators or small investors.

India may also impose reporting obligations on major NFT platforms. Platforms can be required to report transaction information, wallet addresses, and consideration paid. This will allow tax authorities to track NFT revenues and also stop tax evasion. Importantly, reporting obligations could be preceded by a de minimis exception to avoid overloading small artists and individual sellers.

- *Anti-Abuse Measures*

NFTs, like cryptocurrencies, can be misused to launder money, evade taxes, and commit fraud. The U.K. instance, where HMRC seized NFTs in a VAT tax evasion raid, shows the importance of viewing NFTs as enforceable and seizable assets.

For India, this would involve amending enforcement tools under the Income Tax Act and GST legislation to extend explicitly to NFTs. The authorities need to be empowered to:

- Freeze and attach NFTs in investigations.
- Monitor blockchain-to-blockchain transactions with technical assistance.
- Seize the NFTs in tax fraud or evasion cases established.

These powers will prevent NFTs from being safe havens for criminal financial activity.

- *Integration with Financial Regulation*

Finally, the EU Markets in Crypto-Assets Regulation (MiCA) is a demonstration of the need for the tax law to be synchronized with broader financial regulation. NFTs will overlap with securities, intellectual property, and consumer protection. Tax law, when drafted in isolation, will be in conflict with financial regulation, and it will confuse taxpayers. India therefore has to make sure that its taxation regime for NFTs aligns with its future legislation on cryptocurrencies and digital assets. For example, if NFTs are classified as financial instruments under certain circumstances, then the securities law and the taxation law must be harmonized. Similarly, if NFTs are included in consumer protection law, then such classification must be harmonized with the tax law. Such a harmonized regime will reduce uncertainty and provide a balanced digital economy.

10.4. Policy Considerations

India's NFT taxation is at an early stage, and the policy decisions now will decide whether India has a thriving digital asset economy or misses out on talent and capital going offshore. Although the present regime under section 115BBH of the Income Tax Act, 1961 levies a flat 30% tax on income derived from NFTs and other virtual digital assets (VDAs), it has been criticised as inflexible, discriminatory, and innovation-suppressing.[33] This section examines three central policy questions: whether NFT taxation should follow capital gains principles instead of a flat 30% rate; whether there should be a distinction between creators and investors; and the role of international tax cooperation in governing NFTs.

10.4.1. Capital Gains Principles vs. Flat 30% Tax

India's existing VDA regime under section 115BBH equates all income accruing from NFTs with that accruing from gambling, lotteries, and speculative transactions, charging them at a flat rate of 30% without permitting deductions (apart from cost of acquisition) or set-off of losses. Although this gives certainty and assures revenue to the government, it is significant with regard to concerns of fairness and proportionality.

Constitutionally, Article 14 of the Constitution requires equality before law and forbids classifications that are arbitrary. The rule of reasonable classification mandates that any classification in law must (i) be based on an intelligible differentia and (ii) have a rational nexus with the object to be attained. To tax NFTs, which could be long-term investment assets like digital art, music, or intellectual property rights, at the same rate as winnings on bets arguably does not pass the test. In K.T. Moopil Nair v. State of Kerala (1961), the Supreme Court ruled that taxation cannot be so excessive or arbitrary as to contravene Article 14. Flat 30% rate, which does not consider the nature, holding period, or economic purpose of NFT transactions, stands the chance of being categorized as arbitrary on this standard.

Doctrinally, Indian tax jurisprudence has long accepted the principle of capacity to pay. In Aashirwad Films v. Union of India (2007), the Court was keen to stress that taxation has to be aligned with the economic capacity of the taxpayer. The capital gains regime, differentiating between short-term and long-term holdings and granting differential tax treatment, bears witness to such a principle. Applying capital gai/ns principles to NFTs would bring taxation closer to economic reality:

- Long-term NFT holders would be incentivised to retain assets for appreciation in value, drawing lower rates and cutting speculative turnover.
- Short-term traders, on the other hand, would still be taxed at higher rates, discouraging pure speculation.

A comparative approach reinforces the argument. In the U.K., disposals of NFTs by individuals are usually taxed under the rules on capital gains. In the U.S., NFTs are classified as property, and based on the type of asset, capital gains tax rates are applicable (with certain NFTs being classified as collectibles subject to a higher 28% rate). Both territories maintain the distinction of taxation on the basis of nature and holding, ensuring equity while safeguarding revenue.

Therefore, India has to reassess if the flat 30% regime is warranted in the long run. A calibrated approach, where NFTs that are being employed as investment assets are brought within the capital gains regime, whereas speculative or high-risk NFT activities are left within a higher slab, would strike the right balance between revenue requirements and fairness and innovation.

10.4.2. Separation Between Creators and Investors

The second most important policy question relates to whether creators and investors are taxed separately. Currently, India treats both equally under the same flat 30% regime. This does not take in to

[33] PwC India, *Taxation of Virtual Digital Assets – Impact and Insights* (PwC Report, 2022) https://www.pwc.in/assets/pdfs/services/tax/taxation-of-virtual-digital-assets.pdf.

consideration the different roles and economic contributions of creators and investors.

- ***Creators:*** When an artist, musician, or game creator mints and sells NFTs, the transaction is akin to selling an original painting or licensing intellectual property. Principally, it should be considered business income or royalty income under sections 28 and 9(1)(vi) of the Income Tax Act. Doing so would enable creators to claim rightful business deductions, such as platform fees, "gas" fees for minting, software expenses, and advertising expenditures. Refusal of these deductions under section 115BBH penalizes creatives by taxing gross as opposed to net income, against the settled principles of taxing real income enunciated in Godhra Electricity Co. v. CIT (1997).
- ***Investors:*** Conversely, an investor purchasing an NFT for appreciation and then reselling it at a later time is closer to an equity investor. Such profits fit more naturally into the capital gains regime, where taxation takes both investment goal and holding duration into account.

A number of jurisdictions already provide this distinction. The U.K. taxes creators on income principles and investors on capital gains tax. In the U.S., primary sales by artists are usually taxed as ordinary income, while second-hand trading by investors is treated with capital gains. This double tier ensures equity and invites participation by small creators, who otherwise would be discouraged under India's uniform tax regime.

By not separating creators from investors, India stands to discourage small entrepreneurs and artists from entering the NFT space. While NFTs are currently empowering Indian creators to reach global markets, policy has to ensure that tax does not end up acting as a stumbling block to creativity and innovation.

10.4.3. Role of International Tax Cooperation (OECD Framework)

NFTs are global assets by nature. A token minted in India might be sold to an American buyer through a Singapore-based platform, with payment in Ethereum. Such transactions pose problems of jurisdiction, enforcement, and avoidance of double taxation.

In order to cure these issues, the OECD issued the Crypto-Asset Reporting Framework (CARF) in 2022. CARF aims to achieve a global standard for reporting of crypto-asset transactions like the Common Reporting Standard (CRS) for financial accounts. Intermediaries like NFT marketplaces and crypto exchanges under CARF would be obliged to report transaction information (such as wallet addresses, sale amounts, and user information) to tax authorities, who would then share this information between jurisdictions.

For India, joining CARF is necessary for the following three reasons:

- *Preventing Tax Evasion:* Without foreign platforms' data, Indian authorities are unable to monitor NFT income earned overseas properly. Joining CARF will help India automatically receive such data.
- *Evading Double Taxation:* Currently, India's Double Taxation Avoidance Agreements (DTAAs) do not apply to NFTs by specific mention. This raises doubts about whether income is taxable in India, in the jurisdiction of the buyer, or both. Joining CARF and renegotiating treaties can be clarificatory.
- *Global Alignment:* The EU's implementation of DAC8 (the directive covering reporting obligations for crypto-assets) and the U.S.'s recent broker reporting requirements indicate that global trends are platform-oriented reporting. India needs to catch up with these changes so that it doesn't turn into a regulatory outlier.

Moreover, India's own Equalisation Levy and Significant Economic Presence (SEP) regulations already have digital economy taxation in their sights. Bringing NFT taxation into these schemes — while aligning with CARF — would enhance India's capacity to tax cross-border NFT receipts consistently and equitably.

10.4.4. Broader Policy Implications

These concerns underscore the necessity for India to eschew one-size-fits-all thinking. Impostinging NFTs at a uniform 30% risks infringing constitutional maxims, deterring creators, and sending innovation offshore. A more sophisticated policy structure should instead:

- Apply capital gains concepts to investors, maintaining equity and incentivizing long-term holding.
- Subject creators' revenue as business or royalty income, with allowable deductions for legitimate costs.
- Become actively engaged in international standards such as CARF to provide cross-border transparency and avoid avoidance.

This approach serves to balance equity, efficiency, and enforceability — the three cornerstones of good tax policy. This would also make India's NFT regime consistent with global best practices while shielding government revenue and facilitating India's digital economy growth.

11. SUGGESTIONS AND RECOMMENDATIONS

Taxation of NFTs in India is also in its nascent stage. The government has made a good beginning by proposing a flat rate of 30% under Section 115BBH of the Income Tax Act, but this method, although simple, has several practical and doctrinal issues. A few focussed reforms could be explored while creating a well-balanced and future-proof framework.

11.1. Defining definitive valuation principles for NFTs

One of the biggest challenges facing NFTs is that there is no standard approach to valuation. Unlike listed securities, whose market value is easily available, the value of an NFT tends to be subjective and based on aesthetic, cultural, or speculative considerations. This means that taxpayers will find it hard to self-assess, and tax authorities will find it just as difficult to check. India can learn from nations such as the United Kingdom, where officials instruct how digital assets must be valued for capital gains tax purposes. The Central Board of Direct Taxes (CBDT) may issue a circular or guideline specifying acceptable valuation approaches, like the most recent sale price, independent appraisals, or averaging marketplace bids. This would eliminate litigation and provide greater certainty for taxpayers as well as the tax department.

11.2. Separation between creators and traders

Taxing all NFT players in a single tax bracket ignores their very different roles. A digital artist creating an NFT is involved in creative work similar to selling intellectual property, while an investor flipping NFTs is more akin to a stock market trader. Some jurisdictions already do so: e.g., the United States taxes creators' income as common income, but investors' gains are subject to capital gains. India may follow suit and tax NFT sales by creators as business income or royalties (subject to expense deductions), but investors on secondary markets may be taxed through rules of capital gains. This distinction would promote India's digital art economy without deterring market engagement.

11.3. Lightening the compliance burden by reconsidering the 1% TDS rule

The concept of a 1% Tax Deducted at Source (TDS) on NFT transfers was designed to monitor transactions. But in reality, this provision has caused liquidity issues and deterred frequent trading, as even minor transactions are affected by the deduction. A better strategy would be either to reduce the TDS rate (to a percentage like 0.1%) or to introduce it only after crossing a sensible limit, as is the case with securities. This would also mean monitoring without killing the still-born NFT market in India.

11.4. Tackling cross-border NFT transactions by way of bilateral tax treaties

NFTs, by definition, tend to be cross-border transactions—an Indian collector may purchase an NFT from an American artist through a Singaporean exchange. Such transactions today exist in a grey area, with the potential of double taxation or non-taxation. India must think of revising its Double Taxation Avoidance Agreements (DTAAs) to deal specifically with digital assets, as it did when implementing provisions on e-commerce and royalties. Keeping pace with global efforts like the OECD's Crypto-Asset Reporting Framework will also ensure that India does not fall behind in establishing international digital tax norms.

11.5. Shifting to a model based on capital gains

Lastly, India needs to reconsider the imposition of a blanket 30% tax on all NFT income. While it is simple and certain, it fails to reflect the heterogeneity of NFT transactions, the differential ability of taxpayers, or the doctrine of justice in taxation. A gradual move towards a model where capital gains are the focus, just like the one under equity shares and mutual funds, would be fairer. Short-term transactions would be taxed at higher rates, and long-term investments would be under concession. It would be in line with settled principles of progressivity and promote longer-term investment in digital assets.

12. CONCLUSION

12.1. Summary of key findings

The emergence of non-fungible tokens (NFTs) is one of the most notable trends in the digital economy, reconfiguring the understanding of ownership, creativity, and value within the cyber world. India has recognized this trend through the Finance Act, 2022, by including NFTs in the tax net as other virtual digital assets. The imposition of a flat 30 per cent tax on NFT income and the necessity of one per cent TDS on each transaction are explicit signals that the government hopes to reap revenue from this fast-growing marketplace. Yet, though the move shows a determination to watch and regulate the digital economy, it also indicates various limitations that highlight the shortcomings of the prevailing regime.

The study in this paper reveals that India's regulatory architecture for taxation of NFTs is inflexible, incomplete, and out of sync with the fast-changing realities of digital creativity. The fundamental challenge is valuation because NFTs are extremely subjective assets for which there is no widely accepted method of determining their fair market value. In contrast to common securities, where market forces and exchanges cause relatively stable benchmarks, NFTs rely on demand, scarcity, and artistic judgment, such that taxation in the absence of valuation clarity is not easy. Moreover, double taxation risks are left unresolved, especially when royalties, resale proceeds, and GST intersect in a way that imposes multiple burdens on the same transaction.

Another significant observation is the difficulty of cross-border enforcement. Since NFTs are frequently minted, bought, and sold across global platforms, India's unilateral policy presents enforcement challenges, tracing revenues, and resolving disputes. Not only does this make Indian taxpayers' compliance more cumbersome, but it also threatens to channel NFT creators and traders into foreign-friendly jurisdictions, leading to a digital brain drain. The present model thus stands to undermine the same innovation and economic opportunity that NFTs might create for India's creative and digital industries.

The comparative examination against jurisdictions such as the United States, the United Kingdom, Singapore, and the European Union further reveals that India's stance is lacking in nuance. Whereas the United States deems certain NFTs as "collectibles" under capital gains taxation, and Singapore has exempted GST on NFTs in certain situations, India has followed a blanket flat-rate taxation system that makes no differentiation among creators, investors, and traders. This one-size-fits-all strategy overlooks the diverse nature of NFT transactions and economic roles played by various stakeholders. Consequently, while India has gained a semblance of certainty with the Finance Act, it has done so at the expense of fairness, efficiency, and innovation.

This paper therefore contends that India's NFT taxation regime needs reform urgently. To begin with, unambiguous guidelines on valuation should be introduced, possibly in the form of a hybrid model which considers transaction history, comparable sales, and platform-declared prices. Second, distinction between true creators and investors must be made, with more favoured tax treatment for the creators to promote creativity and export of culture. Third, regulatory compliance burdens like the 1 per cent TDS must be rationalised in order to prevent liquidity shortages, particularly for small traders and creators. Fourth, India needs to seek bilateral tax treaty modifications and interact with OECD-led platforms to make sure that cross-border NFT transactions are governed such that double taxation and revenue drain do not occur.

It also adds to the discussion on Indian taxation of NFTs in a new way by considering NFTs as a separate category of Virtual Digital Assets, and not incorporating them into debates around cryptocurrency. It takes forward the debate using comparative insights from the US, UK, Singapore, and the EU, placing India's strategy within the global policy context. Above all, it formulates a reform-focused framework that strikes a balance between raising revenues and innovation in the digital space, making specific recommendations like tiered classification of NFTs, taxing capital gains, and platform-based compliance systems.

Finally, the aim should be to strike a balance between the twin goals of revenue mobilization and innovation encouragement. India cannot overlook the NFT ecosystem, which is not just about financial transactions but also cultural capital, intellectual property, and new avenues in sectors like gaming, art, sports, and entertainment. A strict model of taxation would deprive NFTs of their ability to create employment, exports, and digital leadership. Instead, a responsive, innovation-friendly, and world-class taxation system would enable India to reap revenue without compromising on creativity and competitiveness.

In conclusion, although India has made a significant step by acknowledging NFTs in its tax system, the system as of now is incomplete, inflexible, and not practical for long-term development. The lack of clarity in valuation, double taxation risks, and the inability to deal with cross-border issues reflect its inadequacies. Unless reformed, the existing structure could discourage creators, investors, and innovators from participating in the Indian NFT space, thereby driving them towards more accommodating jurisdictions. In order to avoid this result, India needs to implement a more advanced strategy that learns from jurisdictions for comparison, minimizes compliance barriers, and constructs a forward-looking tax system. This model would not only improve the government's revenue stream but also establish India as the world leader in the digital economy of the future.

12.2. Future scope for research and policy development

The regulation of Non-Fungible Tokens (NFTs) in India is at a very early stage, and the existing regime under the Finance Act, 2022 provides only a skeletal framework. While the NFT ecosystem is emerging quickly on the technology, market, and legal fronts, there is a lot of scope for policy work and academic research.

From a research context, subsequent studies should transcend statutory interpretation and investigate the real-world economic effect of NFT taxation in India. Empirical analysis of the effect of the 30% flat tax and 1% TDS on NFT marketplaces, artists, and investors may yield compelling evidence for change. Surveys and primary research on the ground, especially from Indian creators and platforms, would better comprehend burdens of compliance and determine if the present regime is forcing talent overseas. Comparative studies on valuation models such as algorithm-based pricing and industry self-regulation could further provide more objective frameworks for estimating NFT value.

Policy-wise, India must question if its existing strategy, equating NFTs with speculative earnings, is feasible. There is potential to create differentiated tax treatment among creators, collectors, and professional traders, similar to distinctions already existing under capital gains tax. Policymakers need to deal with GST overlap as well, ensuring NFT transactions are not subject to indirect and direct taxes in a manner that discourages engagement. Another priority area is cross-border enforcement, where international cooperation and bilateral tax treaties—potentially under the OECD's developing digital tax agenda—may be able to offer certainty and mitigate arbitrage risks.

Lastly, as NFTs venture into areas other than art and collectibles—like supply chain management, intellectual property licensing, and tokenized physical assets—the law has to catch up with these novel uses. Future studies can address the question of how India's tax legislation is to react to such hybrid models without dampening innovation.

Overall, the future direction is one of designing evidence-based reforms that reconcile the revenue interests of the state with those of cultivating a vibrant digital economy. Through the infusion of comparative understanding, empirical studies, and global best practices, both policy and scholarship can help create an equitable, efficient, and innovation-supportive NFT tax regime for India.

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